

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5967 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BL SUD

Versus

MEMBER (EXPLORATION)

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Appearance:

MRS KETTY A MEHTA for Petitioner

MR VYAS for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/07/1999

ORAL JUDGEMENT

#. This is a case which exhibits an example how the respondent No.1, who is the member of the Oil and Natural Gas Commission (ONGC), which is a state within the meaning under Article 12 of the Constitution of India has not cared what to say to follow the judgment of this court, which has been confirmed even by the Hon'ble Supreme Court also.

#. The facts of the case are that the petitioner joined the services of ONGC as Rigman in the year 1962. In 1974 he was promoted as Drilling Assistant. The further promotion was given to the petitioner in the year 1983 on the post of Driller (SH). In the year 1985 the Commission framed a scheme whereby the employees were permitted to form a cooperative society to work for the Commission on contract basis. The employees concerned has to take the membership of the cooperative society. So far as the services with the Commission is concerned he will retain his suspended lien for a maximum period of 3 years or till the date of the superannuation whichever is earlier. Option was there to the employee who opted for the membership of the cooperative society to get his repatriation to the Commission on his original post, subject to the condition that it is exercised within stipulated period.

#. The petitioner opted for the scheme aforesaid and joined cooperative society by having his suspended lien on the post of Driller (SH) in Commission. The petitioner later on considered it could not be in his own interest to continue as a member of the society and before 3 years of suspended lien period he opted for repatriation to the Commission. He made application to the Commission on 15/6/1988. That application was came to be replied by the Commission vide letter dated 4/12/1988. On 6/2/1989 all the members of the society were opted for the voluntary retirement under the scheme introduced by the Commission. The Superintending Geo Physicist, Dehradun informed the Regional Director, Baroda that the petitioner and others who were in the society, and opted for voluntary retirement cannot be accepted as they have not opted for repatriation to the Commission before expiry of the period of 3 years suspended lien period. On 2/6/94, the petitioner again requested for repatriation. It is the case of the petitioner that identically situated persons, who made requests for repatriation and voluntary retirement were refused all over India by the Commission. Petitions were filed in various High Courts. Special civil application No.2085/93d was filed in this court by the persons of Exploratory Drillers Cooperative Society in which the petitioners therein challenged the action of the Commission of not allowing them repatriation to their original post though had applied within 3 years of period of suspended lien. This petition was came to be allowed on 6/12/1993. The Commission has taken up the matter in Letters Patent Appeal No.98/94, which was also rejected on the ground that in the earlier petition of N.K.Arora

in identical circumstances, the relief was granted by the Single Judge and Letters Patent Appeal as well as Special Leave Petitions filed by the Commission in the apex court were dismissed. In this case also despite of the judgment of the Letters Patent Appeal Court the commission preferred Special Leave Petition No.10780/94 before the Hon'ble Supreme Court, which was came to be dismissed on 27/7/1994. On 29/7/1994 a writ petition under Article 32 was preferred before the Hon'ble Supreme Court by employees of the Commission from other states being writ petition No.672/93. The learned counsel for the petitioner submitted that in the writ petition, the Hon'ble Supreme Court directed the Commission to evolve uniformity in the matter of repatriation of the employees of the category in view of its earlier decision in SLP arises from the judgment of Gujarat High Court. The Commission, as per the case of the petitioner agreed for repatriation of employees, who were working in the cooperative society subject to two conditions mentioned in the order of the Hon'ble Supreme Court passed in the writ petition aforesaid. These two conditions are, (i) the persons who seeks repatriation will refund the retirement benefits and other benefits withdrawn by them at the time when they were relieved from the Commission and joined the Society. The said refund will be made without interest and in the instalment which will be systematically considered by the Commission; (ii) That the period for which the employee did not work with the Commission that period will be treated as dies non. After that decision all over India the persons, who had join the society were permitted to be repatriated to the Commission.

#. It is the grievance of the petitioner that though he applied within 3 years from the date of joining of the society for repatriation to the Commission but he was not given benefits though in the petition filed by the other employees, who also joined service of the society being special civil application No.10492/94 on behalf of the Commission a statement has been made before this court that they will repatriate the employees on the basis of the judgment of the Hon'ble Supreme Court and accordingly that petition was disposed of. The petitioner on 8/4/97 sent a letter to the Regional Director, ONGC., Baroda and prayed that he may be allowed to come back to the Commission as he is the only person staying out and is neither having work nor remuneration. He has given out that he has already opted for repatriation. On 16/12/1997 the request of the petitioner was rejected on the ground that the petitioner's case has been examined by the competent authority but has not agreed to

repatriate him. Hence this special civil application.

#. The respondents filed the reply to this special civil application to which the petitioner filed the rejoinder then the respondents filed sur-rejoinder also.

#. The learned counsel for the petitioner raised twofold contentions. Firstly, it is contended that the petitioner has a right of repatriation to the Commission, which right was specifically retained by him while joining the service of the society. He exercised his this right within the period of 3 years of suspended lien and the Commission has to take him back in the service. Alternatively, it is contended that even if it is taken that the petitioner has not exercised his right of repatriation within the period of 3 years suspended lien still as the matter is covered by the decision of the Hon'ble Supreme Court he should have been taken back in the service by the Commission. The second contention raised that hostile discrimination has been made in the case of the petitioner. The other members of the very society in which the petitioner was there were permitted to be repatriated to the Commission and the same benefit was not given to the petitioner.

#. As usual in the submissive manner what the learned counsel for the respondent contended that this writ petition deserves to be dismissed only on the ground of delay and laches as the petitioner has not brought this matter immediately in the year 1988. He waited for 10 years and now at this stage the relief may not be granted. Claim of the petitioner of the repatriation to the Commission has also seriously been contested.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The decision of this court is there on the record of this special civil application as Annexure-E at page No.45. The judgment of the Hon'ble Supreme Court given in Special Leave Petition No.10780/94 is there on the record of this special civil application at page No.52. The decision of the Hon'ble Supreme Court in writ petition No.672/93 is also there at page No.54. From the reading of the earlier judgment of this court at page No.101, I find that there was a contention raised by the Commission that the person concerned therein have not exercised their option of repatriation within a period of 2 years of suspended lien. There seems to be a dispute that the period of suspended lien was 2 years. It is

true in that case all the persons concerned have exercised their option within 3 years. Another contention was raised that right of repatriation could have been given to the employees of the society only when the society itself is wound up or dissolved. This court has considered that matter with reference to the provisions as contained in 3.3. and 3.5 of the scheme as well as the terms of the lien and the decision of the Madras High Court wherein it is held that a right or privilege is reserved for individual employee to get repatriated to the Commission on expiry of the period of suspended lien and held that the petitioner entitled to be repatriated to the Commission on the expiry of suspended lien period i.e. 3 year. In the earlier judgment the court has further considered the matter with reference to the regulation Nos. 14 & 15 of the Commission. The court has held, even if the employees executed the agreement that after expiry of 3 years period the lien in the services of the Corporation will be terminated it cannot be taken so. The court held that "Even if it is assumed that he had executed an agreement to that effect, as per Reg.15, the same could not have been done even with the consent of the petitioner. These regulations are statutory provisions and cannot be superseded by mere understanding obtained which has no statutory force". The regulation No.14 provides that "Lien of an employee can in no circumstances be suspended on tenure post unless he is appointed substantively to another post." Then comes the question of termination on lien. Regulation No.15 provides that "except in according with the provisions made in this regulation the lien of an employee on a post in no circumstance can be terminated even with his consent".

##. A conjoint reading of these two regulations gives out that even if there was some agreement in between the petitioner and Commission for suspended lien only for 3 years it could not have been suspended once for all and could have been terminated only when he is appointed on substantive post. The services of the society was different than the service in Commission. The petitioner has not substantially appointed on any other post in the Commission and there is no question of termination of his lien. Otherwise also, unless the lien of the petitioner is terminated the Corporation could not have acquired any right to decline to take the petitioner back in the service. The termination of the lien even is not permissible with the consent of the employer as what it is provided in the Regulation No.15. So, taking into consideration the totality of the facts of this case under the agreement the lien of the petitioner is not

terminatable and even if it is taken that he has not opted for repatriation before expiry of 3 years suspended period of lien it is hardly of any substance, relevance and merits. It is what precisely this court has decided which decision has been affirmed by the Hon'ble Supreme Court. The denial of the relief to the petitioner on the ground as done in the present case by the Commission is not only contrary to the regulations but contrary to the decision of this court. Looking to the facts of this case as well as the provisions of regulation Nos. 14 & 15 and decision given by this court and by the Hon'ble Supreme Court, this petition is not of the category where it has to be dismissed for only on the ground of delay and laches.

##. Then comes what relief to be granted to the petitioner. So far as the question of repatriation is concerned, the petitioner has to be permitted to be repatriated to the Commission on the same terms and conditions on which the other employees of the Commission who were sent to the society were permitted to be repatriated. But the petitioner has not worked for all these years i.e. from 15/6/1988 to till date. The learned counsel for the petitioner who confronted with this position, has very fairly submitted that this court may not grant any salary to the petitioner for the period from 15/6/1988 to the date of the filing of the petition. It is understandable that in an appropriate case salary could have been given from the date of filing of the petition. However, on the principle of no work no pay and this inordinate delay in approaching to the court by the petitioner he will be entitled for actual benefits of the salary only from today.

In the result this special civil application succeeds and the same is allowed. The respondents are directed to take back the petitioner in service. His pay should be fixed notionally on 30/1/1999. The petitioner shall not be entitled for actual benefits for the period from 15/6/1988 to 29/1/1999. The question of voluntary retirement of the petitioner may also be considered in accordance with law.

Rule is made absolute in the aforesaid term with no order as to costs.

(S.K.Keshote, J.)

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